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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,517	04/15/2004	James McGarry	E6026-490	8160
67812	7590	05/02/2007		
DUANE MORRIS, LLP 968 POSTAL ROAD, SUITE 200 P.O. BOX 90400 ALLENTOWN, PA 18109-0400			EXAMINER CLEMENT, MICHELLE RENEE	
			ART UNIT 3641	PAPER NUMBER
			MAIL DATE 05/02/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/825,517

**Applicant(s)**

MCGARRY, JAMES

**Examiner**

Michelle (Shelley) Clement

**Art Unit**

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23,26 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 7 is/are allowed.
- 6) ☒ Claim(s) 1-5,8-23,26 and 31-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 2/5/07 have been fully considered but they are not persuasive. In response to applicant's arguments concerning the Luger reference, it is noted that although Luger does contain a pin and the fulcrum or edge about which the lever pivots is a pin, it does not constitute a "pinned connection" and the indicator lever is not "pinned" or fastened down. The "pin" merely provides a fulcrum or an edge about which the indicator lever pivots, it does not, in any way, connect, or "pin" the lever to the housing; in that the "pin" of Luger does not constitute a "pinned connection" or a "pinned pivot" it is equivalent to applicant's "edge defining a fulcrum" "the indicating element pivotally engaged with the edge between the center and one of the ends to define a pinless pivot". Applicant's remaining arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as necessitated by applicant's amendments.

### ***Claim Objections***

2. Claim 31 is objected to because of the following informalities: The claim is grammatically incorrect and appears to be missing terms; "to receive a cartridge having rim, the slide including defining a fulcrum". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3641

4. Claims 15-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The indicating element being pivotally displaceable **without bending** was not described in the specification at the time the application was filed.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-5, 8-23, 26, and 31-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The term "rigid" in claims 1, 15, 20 and 31 is a relative term which renders the claim indefinite. The term "rigid" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant has disclosed the element as being "substantially rigid" and has disclosed the element comprising different materials having various degrees of rigidity but since the term is a relative term, unless given a specific numerical definition (for instance a spring is rigid compared to a string), one of ordinary skill in the art would not be reasonably apprised of what constitutes "rigid".

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 9-20, and 31-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Walther (US Patent # 2,145,328). Walther discloses a centerfire autoloading pistol with a pinless indicator that can indicate a loaded chamber, comprising; a housing having an external surface and defining a chamber to receive a cartridge having a rim, the housing including an edge defining a fulcrum, and a rigid movable indicating element (reference 9a) having a first end, a second end, and a center equally spaced therebetween, the indicating element pivotally engaged with the edge between the center and one of the ends to define a pinless pivot, wherein the indicating element is positioned in the housing to contact the rim of the cartridge and is movable to a position in which the indicating element protrudes outwards from the external surface of the housing to provide a user of the pistol with a visual and tactile indication that the cartridge is loaded in the chamber. The indicating element is mounted in a top of the housing. The indicating element is an elongated lever and the top of the housing comprises an elongated slot configured to pivotally receive the indicating element. The lever further comprises a support base (reference 12) projecting downwards from a bottom surface of the lever which rests on the housing. The elongated slot contains a landing configured to receive the support base of the lever. The indicating element comprises a forward sloping surface on the first end to make smooth initial contact with the cartridge. The pistol further comprising a reciprocating slide. The indicating element being a one-piece element. The indicating element pivotally engaged proximate to the rear end with the edge of the slide to define a pinless pivot and positioned in the slide. The indicating element is displaceable in an upward direction. The mid-portion and front

Art Unit: 3641

end are displaceable to the loaded-chamber indication position. The rear end of the indicating element is restrained in the slide without a pinned connection by two opposing horizontal surfaces arranged to contact each other, one of the horizontal surfaces disposed on the indicating element and the other horizontal surface disposed on the slide. The cartridge has a rim which holds the indicating element in the loaded-chamber indication position. The pistol comprising a trapping member (reference 7) removably mounted on top of the slide, the trapping member including a first horizontal surface and an adjoining first sloping vertical surface disposed at a first angle to a vertical plane and intersecting the first horizontal surface to form an edge defining a fulcrum and a indicating lever having a second horizontal surface and an adjoining second sloping vertical surface disposed at a second angle to the vertical plane and intersecting the second horizontal surface to define a pivot point. At least a portion of the first horizontal surface of the trapping member disposed on top of the second horizontal surface of the indicating lever to removably secure the indicating lever to the slide, the edge of the trapping member pivotally engaged with the pivot point of the indicating lever without a pinned connection, wherein the indicating lever contacts the rim of the cartridge when inserted in the chamber and pivots about the pivot point so that at least a portion of the indicating lever protrudes outwards from the external surface of the slide. Wherein the trapping member is a rear sight. Further comprising a gap between the first and second sloping vertical surfaces to allow pivotal movement of the indicating lever with respect to the trapping member. Further comprising a biasing member acting on the indicating lever to urge a front portion of the indicating lever towards the chamber. Wherein the pivot point is located proximate to a rear end of the indicating lever.

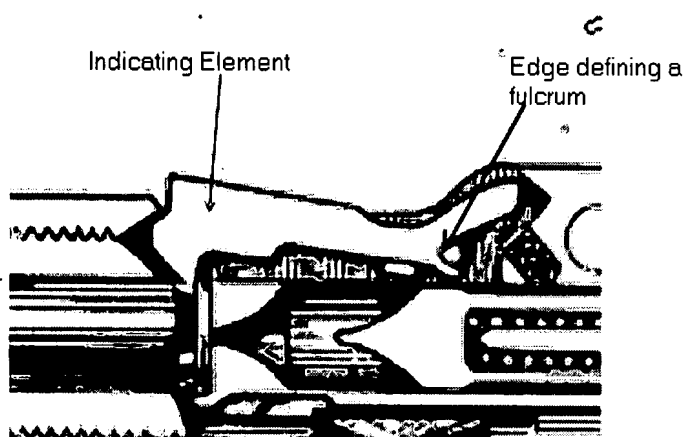
Art Unit: 3641

10. Claims 1-5, 10-21 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Luger discloses a loaded chamber indicator for pistols comprising a housing comprising a reciprocating slide, having an external surface and defining a chamber to receive a cartridge having a rim, the housing including an edge defining a fulcrum and a movable element having a first end, a second end, and a center equally-spaced therebetween, an indicating element pivotally engaged with the edge between the center and one of the ends to define a pinless pivot (or a pivot that is not pinned), wherein the indicating element is positioned in the housing, at a rear end of the slide, to contact the cartridge and is movable to a position in which the element protrudes outwards from the external surface of the housing to provide a user of the pistol with a visual and tactile indication that the cartridge is loaded in the chamber. Wherein the element does not protrude outwards from the external surface of the housing to a second position in which the element protrudes outwards from the external surface of the housing. Wherein the element is positioned generally behind the chamber and the first end is a front end and the second end is a rear end, the front end located closer to the chamber than the rear end, wherein the element is pivotally engaged with the fulcrum at the rear end. Wherein the entire element between the fulcrum and the front end is movable from the first position to the second position. Wherein the pistol comprises an external surface and at least a portion of the element protrudes outwards from the external surface of the pistol in a loaded-chamber-indication position to provide a user of the pistol with a visual and tactile indication that a cartridge is in a loaded position. The element is a bar-shaped lever, the second end and the mid-portion are both unconstrained and displaceable in relation to the housing. The element is mounted in the top of the housing and is displaceable in an upward direction. The element is an elongated lever and

Art Unit: 3641

the top of the housing comprises an elongated slot configured to pivotally receive the element.

The pistol comprising a spring that acts against the lever and biases the lever towards the unloaded-chamber-indication position. The lever comprises a support base projecting downwards from a bottom surface of the lever which rests on the housing and the elongated slot contains a landing figured to receive the support base of the lever. The element comprises a forward sloping surface on the first end to make smooth initial contact with the cartridge. The rear end of the indicating element is restrained in the slide without a pinned connection by two opposing horizontal surfaces arranged to contact each other, one of the horizontal surfaces disposed on the indicating element and the other horizontal surface disposed in the slide. Indicia is provided on a side surface of the lever to communicate to a user that a cartridge is loaded in the chamber.





***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 8, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walther as applied to claims 1 and 20 above. Walther discloses the claimed invention except for the lever specifically expressly being at least 1.0 inch long and the indicia being at least .085 inches tall. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the lever at least 1.0 inches long and the indicia at least 0.085 inches tall, since it has been held that discovering an optimum or workable size of a result effective variable involves only routine skill in the art and applicant has furthermore disclosed that these sizes are merely a matter of design choice.

***Allowable Subject Matter***

13. Claims 6 and 7 are allowed.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3641

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michelle (Shelley) Clement  
Primary Examiner  
Art Unit 3641